SUPREME COURT, U. S.

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No. 30

In the

Supreme Court of the United States

OCTOBER TERM, 1965

JOHN PINKOWSKI,

Petitioner,

vs.

RALPH COGLAY, doing business as MOHAWK EQUIPMENT COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit.

MEMORANDUM FOR RALPH COGLAY, DOING BUSINESS AS MOHAWK EQUIPMENT COMPANY.

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The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 754

JOHN PINKOWSKI,

Petitioner,

vs.

RALPH COGLAY, doing business as MOHAWK EQUIPMENT COMPANY,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Seventh Circuit.

MEMORANDUM FOR RALPH COGLAY, D/B/A MOHAWK EQUIPMENT COMPANY.

The petitioner asserts that two questions are presented by its petition:

1. May a Court of Appeals redetermine facts found by a jury?
2. In deciding whether there is any evidence to support a jury verdict for a plaintiff, may a Court of Appeals look at the facts only from the standpoint of the defendant's theory of the case?

Both of these questions must, of course, be answered in the negative. However, the Court of Appeals did neither

of the things about which the petitioner complains. As shown by the court's opinion, the facts pertinent to the questions presented were undisputed (see page 9a Petition for Certiorari). The Circuit Court of Appeals did not redetermine any facts found by the jury. It merely examined the undisputed facts to determine whether there was any evidence to support the plaintiff's theory of joint venture or agency. Since the facts showed that the only connection of the defendant, Ralph Coglay, with the accident was the lease of a tractor to a common carrier, the Arnel Trading Company, approximately 3 months before the occurrence, that the accident arose out of the unloading of Arnel fish from an Arnel trailer and that the Coglay tractor, the only instrumentality with which the respondent had any connection (and then only as a lessor) did not in any way cause or contributed to cause the accident, the Court of Appeals held that this respondent was not a joint venturer with the common carrier or its driver nor was the driver the agent of the lessor of the tractor in the unloading of the common carrier's trailer.

The petitioner's view of this case is illustrated in particular at page 8 of the petition where he states as follows:

> "The best illustration that the fact situation in this case was peculiarly one for the determination of the jury is in the difficulty encountered in finding case decisions explicitly defining the concept of joint venture."

It is true that petitioner had difficulty finding decisions defining the concept of joint venture in the fashion which he desired to have it defined since the cases do not hold that the mere lease of property to another makes the lessor and lessee joint venturers. However, there are many

authorities including those cited by the Court of Appeals which do define the concept of joint venture and which show that the act of leasing property to another does not make the lessor and lessee joint venturers in the lessee's business. For example, see *Fischer* v. *McMaster,* (1934, Texas) 73 S.W. 2d 554; *Robinson Trans. Co.* v. *Hawkeye-Security Insur. Co.,* (1963, Wyo) 385 P. 2d 203 and *Geo. Bohannon Transportation Inc.* v. *Davis,* (1963, CA 10) 323 F. 2d 755, 757 and *Alden* v. *Stromsen,* (1952, 1st. Dist.) 347 Ill. App. 439, 106 N.E. 2d 837.

The sole connection of Coglay with this operation was as owner-lessor of a tractor which he leased to Arnel Trading for its exclusive use. Arnel Trading owned the trailer and was the carrier of the cargo which caused the injury. Arnel settled its liability for the injury for $45,000. The Court of Appeals properly found that the facts did not make Coglay a joint venturer with Arnel and Keefe, nor did they make Coglay, Keefe's principal.

There is no occasion for further review of this holding. It involves neither the adoption of a novel standard of review nor any other question of law. The case turns solely on the particular undisputed facts of the case as the very careful and detailed opinion of the Court of Appeals demonstrates.

Respectfully submitted,

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